

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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MACOMB INTERCEPTOR DRAIN DRAINAGE  
DISTRICT,

Plaintiff,

v.

Case No. 11-13101

KWAME KILPATRICK, et al.,

Defendant.

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**ORDER SETTING BRIEFING SCHEDULE ON NON-PARTY CITY OF  
DETROIT'S MOTION TO INTERVENE AND TERMINATING  
DEFENDANTS' MOTIONS WITHOUT PREJUDICE**

On July 18, 2011, Plaintiff Macomb Interceptor Drain Drainage District initiated the above-captioned matter against forty defendants. Over the course of the past six months, approximately 20 Defendants have filed motions to dismiss raising substantially similar arguments. The court withheld ruling on the motions until Plaintiff served all Defendants, an event which is soon to occur following the court's January 10, 2012 order granting Plaintiff's request to alternatively serve the final three unserved Defendants. Recently, non-party City of Detroit filed a motion to intervene as a plaintiff. Having reviewed the many motions filed, the court concludes that the most logical and efficient way to proceed in this case is as follows:

1. First, the court will adjudicate non-party City of Detroit's motion to intervene. The City of Detroit states in its motion that it sought concurrence from Plaintiff and Defendants prior to filing the motion and nine Defendants indicated that they would not oppose the relief sought. To the extent any other Defendant desires to

oppose the City of Detroit's motion, counsel for Defendants are *strongly encouraged* to file a consolidated response in opposition to the motion.

Depending upon how many Defendants join the consolidated response, the court is receptive to reasonable requests to increase the page limit. Plaintiff may also file a response to the City of Detroit's motion. All responses shall be filed by **January 27, 2012.**

2. All pending motions to dismiss<sup>1</sup> will be terminated without prejudice. Following resolution of the City of Detroit's motion to intervene, Defendants may refile joint motions to dismiss. By filing joint motions, counsel will mitigate client costs and conserve judicial resources. During the February 10, 2012 status conference, the court will discuss with counsel the best way to file these motions and establish a briefing schedule for the motions. In the meantime, the court will toll all deadlines for the service of motions to dismiss and other responsive pleadings contemplated in Federal Rule of Civil Procedure 12.
3. Finally, at the February 10, 2012 status conference, the court will appoint a "lead defense attorney" who will assume the responsibility of coordinating Defendants' motion practice and scheduling. Counsel for Defendants should consult amongst themselves prior to the status conference to decide who may be best situated to serve in this capacity.

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<sup>1</sup>In addition to terminating Defendants' motions to dismiss, the court will also terminate Defendants' Mersino Dewatering, Inc., Rodney A. Mersino, and Marco Mersino's (collectively the "Merison Defendants") motion for sanctions pursuant to Federal Rule of Civil Procedure 11. The Merisno Defendants may refile their motion simultaneously with the joint motions to dismiss, and the court will rule on the motion for sanctions after the motions to dismiss have been resolved.

Accordingly,

IT IS ORDERED that Defendants' motions to dismiss [Dkt. ## 33, 40, 41, 49, 58, 72, 80, 99, 111, 130] are TERMINATED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Mersino Defendants' motion for sanctions [Dkt. #53] is TERMINATED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that all responses to non-party City of Detroit's motion to intervene shall be filed on or before **January 27, 2012**.

Finally, IT IS ORDERED that all deadlines for the service of responsive pleadings as contemplated by Federal Rule of Civil Procedure 12 are tolled pending further order of the court.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: January 13, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 13, 2012, by electronic and/or ordinary mail.

s/Lisa G. Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522